

WHEREAS, the Authority has prepared a Master Plan for the Wharf Site which calls for the development of a multi-million dollar public recreational area to be used in a variety of ways, including a major entrance to the Boston Harbor Island State Park, an introduction to Boston for visitors sailing or motoring into the harbor and the focus of a highly functional, interconnected land and water transportation system; and

WHEREAS, major elements of public open space adjacent to the Wharf Site have been already developed, including the Waterfront Park, and site improvements adjacent to the Marriot Hotel at Long Wharf and the New England Aquarium, Inc., and

WHEREAS, certain private, commercial excursion and commuter boat operators presently tie-up at the Wharf Site and use space thereon for ticketing services under license from the Authority, as set forth in the schedule incorporated herein as Attachment B; and

WHEREAS, the Department is established as the "acquiring agency" relative to the development of Boston Harbor Islands State Park (hereinafter called the "State Park"), pursuant to the provisions of Chapter 742 of the Acts of 1970; and

WHEREAS, the Department has prepared a Master Plan for the State Park which sets forth the necessity of incorporating a central, mainland access and orientation facility on the Boston waterfront, adjacent to public mass transportation and accommodating boat shuttles to the islands in the State Park; and

WHEREAS, the Wharf Site satisfies the Department's requirements for such a mainland facility for the State Park; and

WHEREAS, the Department anticipates the capital funding authorization(s) sufficient to undertake improvements to the Wharf Site which conform to the general design concept set forth in the Authority's Master Plan for Wharf Site and to the Department's needs for the Wharf Site, may be available in the near future;

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein and for other good and valuable consideration, the parties hereto mutually covenant and agree as follows.

ARTICLE I

Definitions and Information

1. Duration of Agreement. This preliminary agreement shall be deemed to remain in full force and effect for a period of (1) one year from the date of signing, which agreement may be extended by mutual agreement of the parties, and will be superceded by a more detailed final agreement.
2. Definition of Terms. The following terms shall have the following meanings in this Agreement:
 - a. "project", the design, construction, management and maintenance of public improvements within the Wharf Site as shown on Exhibit A, including, without limitation, seawall, bulkhead, paving, walls, plant material, street furnishing, lighting, site utilities, storm drainage, docks, and a visitors' center building including public information, wash rooms and exhibit facilities, and a combined ticket sales office for all commercial boat operators tying up at the Wharf Site;
 - b. "public use", such public recreational uses associated with the waterfront site; improved boating and docking facilities for Harbor Island ferries, commuter boats, excursion boats, harbor ferries and water taxis, and transcient boating space; passive recreation including

walking, sitting, thinking, eating, viewing and the like; public spaces for ceremonies, public events and public entertainment; and facilities and interpretation of the State Park and of the Boston waterfront; and

- c. "visitors' center", any structure or structures which may be built on a portion of the Wharf Site which will provide for interpretive exhibits concerning State Park, centralized ticketing and information facilities, exhibits concerning the Wharf Site and the downtown waterfront, sheltered waiting spaces, public rest rooms and other public indoor facilities and services as deemed appropriate by mutual agreement between the Department and the Authority.

ARTICLE II

Disposition of Real Property Interests

1. The Authority and the Department agree that they will negotiate in good faith to reach a mutually acceptable final agreement concerning the public recreational uses and their location on the Wharf Site which:
 - a. ensures that such uses will be available on a continuous basis through such mechanisms as dedications, restrictive covenants, and for easements, incorporated as part of the final project documents, which provide the Commonwealth with sufficient interests in all property improved with State funds to protect the Commonwealth's investment;
 - b. provides the Department with reasonable control over the site for any visitor center built with State funds through a long-term agreement; and
 - c. provides for fee interest in all or part of the Wharf site to remain with the Authority.
2. The Authority and the Department agree that no funds will be transferred by the Commonwealth to the Authority in connection with the project except for any funds advanced for the purposes of preliminary planning, funds which may be currently available to the Commonwealth, funds

which have already been approved for portions of the Wharf Site, and funds from departments and agencies of the Commonwealth which may be deemed appropriate for the project prior to execution of the final agreement.

1. The Department agrees that it intends to execute the project in a manner which is not authorized by Chapter 212 of the Acts of 1980, which requires the Department to transfer certain funds available to it to the Commonwealth Treasury for the purpose of the project.

2. The Department agrees that it intends to execute the following responsibilities, subject to the availability of funds:

a. The Department shall prepare and submit to the Commonwealth a request for a transfer of funds to the Department for the purpose of the project.

b. The Department shall prepare and submit to the Commonwealth a request for a transfer of funds to the Department for the purpose of the project.

c. The Department shall prepare and submit to the Commonwealth a request for a transfer of funds to the Department for the purpose of the project.

ARTICLE III

Intended Responsibilities For The Department

1. The Department agrees that it intends to implement the project in a manner similar to that authorized by Chapter 512 of the Acts of 1980, which empowers the Department to transfer certain funds available to it to redevelopment authorities in certain municipalities, and it agrees to seek such legislative authorization for the project.
2. The Department agrees that it intends to assume the following responsibilities, subject to the availability of funds:
 - a. hire designers and award construction contracts for a visitors center building and interpretative exhibits designed in accordance with this Agreement, and the more detailed subsequent agreement;
 - b. permit the Authority to participate in the review of designer and contract performance and to attend meetings and presentations relative to the design and construction of the visitor's center and interpretive exhibits;
 - c. assign a project planner and project engineer to provide Department liaison, technical assistance and project review to the Authority during planning, design and construction of any elements of the project implemented by the Authority;

- d. provide all staff necessary to operate the visitors center exclusively or jointly with the Authority and/or other parties;
- e. jointly with the Authority and other parties, plan and implement an on-going program of events and activities for the public on the Wharf Site following construction; and
- f. in conjunction with the Authority, make space available in the visitor's center to the present and future excursion boats and water-related users operating from and adjacent to the Wharf Site for centralized ticket sales.

ARTICLE IV

Intended Responsibilities Of The Authority

1. The Authority agrees that it intends to assume the following responsibilities, subject to the availability of funds:
 - a. hire designers and award and supervise construction contract(s) for all phases of the project and as mutually agreed upon in the final agreement;
 - b. survey site boundaries, property titles and the like for the entire Wharf Site; and
 - c. permit the Department to participate in the review of designer and contractor performance and to attend meetings and presentations relative to the project.

ARTICLE V

Intended Project Maintenance

1. The Authority and the Department agree to negotiate in good faith to reach a project maintenance agreement, prior to the transfer of any funds for construction, which addresses the following issues, at a minimum:
 - a. the entity which will be responsible for regular maintenance;
 - b. standards of maintenance to be adhered to by the maintaining authority;
 - c. establishment of a mechanism intended to ensure that adequate funding will be available on a continuing basis to defray the costs of maintenance, such as a park maintenance fund to be funded with revenue from various sources such as grants, loans, contributions, and appropriations from both public and private sources, and from new and incremental increases from existing concessions and leases at the Wharf Site; and
 - d. the right of the Department to perform maintenance duties under specified circumstances.

ARTICLE VI

Intended Provisions Relative To Authority Management Of Any Funds

1. The Authority and the Department agree that provisions similar to those set forth in Attachment C, entitled "Project Development Fund" would be mutually acceptable for inclusion in the final agreement.

ATTACHMENT A

Map of Project Area - Wharf Site



ATTACHMENT B

Schedule of Wharf Site Licensees

As Of October 31, 1983

Boston Harbor Cruises
One Long Wharf
Boston, MA 02110
Rick Nolan, Treas./Matt Hughes, Capt.

Bay State Spray
20 Long Wharf
Boston, MA 02110
Richard Nakashian, President

Lawrence Cannon
67 Lovell Road
Melrose, MA 02176

The Chart House, CHE - d/b/a
7432 La Jolla Blvd.
La Jolla, CA 92037

Custom House Block Trust C/O
Wilder/Manley Associates, Inc.
66 Long Wharf
Boston, MA 02110
Paul C. Grant

ATTACHMENT C

Project Development Fund

Project Development Fund

1. Project Development Fund - Revenues and Accounts

The Authority agrees that it will establish and maintain an account as hereinafter provided, in such manner:

- a. that the account relative to the project will be separate and distinct from all accounts of the Authority relative to any other project, purpose or enterprise administered or engaged in by the Authority;
- b. that all revenues, reserves and funds, from whatever source, received or held by or for the account of the Authority for the purpose of or in connection with the development, execution or administration of the project will at all times be segregated and held in funds and bank accounts separate and distinct from all other funds and bank accounts of the Authority; and
- c. that all interest on Commonwealth funds transferred pursuant to DEM Agreement No. _____ which is accrued in the Project Development Fund account(s) shall not be expended or withdrawn therefrom, provided, however that the Department, following proper notification to the Authority that the project has ended shall withdraw an amount equal to all such accrued interest and shall transfer such amount to the State Treasurer for deposit in the General Fund of the Commonwealth.

All Revenues, income, reserves and funds of the Authority in connection with the Project shall be deposited only in the Massachusetts Municipal Depository Trust, or other bank or banks approved by the Department and in accordance with an administration fund agreement or agreements between the Authority and such bank or banks, such agreements to be in a form as prescribed by the Department. All monies on deposit in such bank accounts shall be defined as "Project Development Funds."

2. Rights of the Commonwealth with Respect to Bank Accounts of the Authority

The Authority agrees that if either one or both of the following events occurs and is not corrected or remedied to the satisfaction of the Department, then the Department shall have the right to direct the bank with which the Authority maintains the Project Development Funds and to refuse to permit any withdrawals from any such account until further notice from the Department and after reasonable notice to the Authority if,

- a. The Authority shall have defaulted in the observance or performance of any one or more of the terms, covenants or conditions of this contract; and
- b. the Authority shall have made any misrepresentation of material fact in any of the certificates, reports, statements or other documents or data required to be submitted pursuant to this contract. In any such event and after reasonable notice to the Authority, the Department shall itself withdraw funds from any such account at

such times as may be necessary in order to make any expenditure properly chargeable to the project and shall apply such funds in accordance with the applicable provisions and requirements of this contract. The Authority will, at the time of opening any account with any bank, obtain an agreement with such bank that

1. upon the receipt of any direction from the Department, and until such direction has been revoked by the Department, no further withdrawal by the Authority shall take place;
2. that such bank will agree with the Department that the bank will forthwith comply with such direction unless and until revoked by the Department; and
3. that any withdrawal of funds, or check, signed by the Department will be honored by such bank only if the Authority's right to make withdrawals from the account has been suspended. At any time after a direction following the default or misrepresentation of material fact, the Department may authorize the bank again to permit withdrawals by the Authority and whenever the Authority shall have made good all such default or corrected all such misrepresentations to the satisfaction of the Department, the Department will authorize the bank again to permit withdrawals by the Authority.

3. Financial Management Requirements - Accounts, Records, Books and Audits

The Authority agrees to manage all funds and activities which are subject to this Agreement so as to provide for:

- a. Records that identify adequately the source and application of funds for Project Development Funds-supported activities. These records shall contain information pertaining to obligations, unobligated balances, assets, liabilities, outlays, and income;
- b. Effective control over and accountability for all funds, property, and other assets. The Authority shall adequately safeguard all such assets and shall assure that they are used solely for authorized purposes;
- c. Comparison of actual outlays with budgeted amounts for each activity. Also, relation of financial information with performance data;
- d. Procedures for determining reasonableness, allowability and allocability of costs in accordance with the provisions of this Agreement;
- e. Accounting records that are supported by source documentation;
- f. Examinations in the form of audits or internal audits. Such audits shall be made by qualified individuals who are sufficiently independent of those who authorize the expenditure of Project Development Funds, to produce unbiased opinions, conclusions, or judgements.

These examinations are intended to ascertain the effectiveness of the financial management systems and internal procedures that have been established to meet the terms and conditions of the Agreement. They should be made in accordance with generally accepted auditing standards including the standards published by the U.S. General Accounting Office, "Standards for Audit of Governmental Organizations, Programs, Activities and Functions." Examinations will be conducted with reasonable frequency on a continuing basis or at scheduled intervals, but not less frequently than every year. The frequency of these examinations shall depend upon the nature, size, and the complexity of the activity; and

- g. A systematic method to assure timely and appropriate resolution of audit findings and recommendations. The Authority further agrees that it will;
 - a. maintain separate full accurate accounts, records and books relative to the project in such manner and in such detail as the Department may reasonably prescribe consistent with generally accepted practices for accounting for capital improvements in a government environment;
 - b. grant to the Governor or his designee, the Secretary of Administration and Finance, or his designee, and the State Auditor, or his designee, the right at reasonable times and upon reasonable notice to examine the books, records and

other compilations of data of the Authority which pertain to the performance of the provisions and requirements of this Agreement;

- c. permit the Department or any accounts or auditors approved by the Department to make periodic audits, excerpts or transcripts of the accounts and financial records of the Authority;
- d. furnish to the Department such financial, operating, statistical and other reports, records, statements, and documents on whatever basis as may be required by the Department; and
- e. furnish copies of the contracts of the Authority and other documents in the possession of the Authority as the Department may from time to time require.

APPROVED AS TO FORM:

Attorney General
Commonwealth of Massachusetts

James Gutensohn
Commissioner
Department of Environmental Management

APPROVED AS TO FORM:

Legal Counsel

Robert J. Ryan
Director
Boston Redevelopment Authority

November 10, 1983

M E M O R A N D U M

TO: BOSTON REDEVELOPMENT AUTHORITY

FROM: ROBERT J. RYAN, DIRECTOR

SUBJECT: REQUEST PERMISSION TO EXECUTE PRELIMINARY AGREEMENT
WITH DEPARTMENT OF ENVIRONMENTAL MANAGEMENT FOR LONG WHARF

On November 3, 1983, the Authority authorized the awarding of a construction contract for the first phase of the Long Wharf reconstruction project. We have been notified by the Commonwealth that additional funding may become available which would permit the Authority to proceed with the remaining phases of the project. These phases include the complete reconstruction of all granite bulkheads, pier reconstruction, brick and granite paving, landscaping and improvements to facilitate mooring of commuter boats, harbor ferries, excursion and transient boats. In addition, the BRA's Master Plan for Long Wharf includes the construction of a visitor's pavillion which would contain central ticketing and information facilities and interpretive exhibits relating to the Boston Harbor Islands State Park.

These phases of the project are estimated to total approximately \$9 million in addition to the funds already in hand for Phase I. No local funds would be required to match the proposed state grant.

To begin the process for obtaining these funds, a Preliminary Agreement between the Commonwealth of Massachusetts and the Authority has been prepared. The Agreement specifies the respective responsibilities of the two agencies, the manner in which funds will be transferred to the Authority, and preliminary objectives in establishing a Project Maintenance Fund to be used by the Authority to cover all administrative, maintenance and operating costs associated with the Long Wharf Project.

It is, therefore recommended that the Board authorize the execution of a Preliminary Agreement with the Commonwealth of Massachusetts concerning the funding of the Long Wharf Project.

VOTED: That the Director be authorized to enter in a Preliminary Agreement with the Commonwealth of Massachusetts, acting by and through the Department of Environmental Management relative to the Development and Management of Public Open Space on and adjacent to Long Wharf.